
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

BONNIE R. FOWLER,

Plaintiff,

v.

MARK R. MCDOUGAL, ET AL.,

Defendants.

**ORDER ADOPTING & AFFIRMING
REPORT & RECOMMENDATION**

Case No. 2:16cv163DAK

Judge Dale A. Kimball

This case was assigned to United States District Judge Dale A. Kimball, who referred it to United States Magistrate Judge Dustin Pead under 28 U.S.C. § 636(b)(1)(B). On December 14, 2016, Magistrate Judge Pead issued a Report and Recommendation concluding that: (1) Plaintiff's Amended Complaint (ECF. Dkt. No. 30) should be dismissed for failure to state a claim under the screening provisions of 28 U.S.C. § 1915 and Federal Rule of Civil Procedure 12(b)(6); (2) Defendants' pending motions to dismiss the Amended Complaint (ECF Dkt Nos. 31, 32, 34, 35, 36) be granted; and (3) Plaintiff's renewed motion for appointment of counsel (ECF Dkt. No. 38) and motion to dismiss Defendants' answers (ECF Dkt. No. 37) be denied.

The Report and Recommendation notified Plaintiff that any objection to the Report and Recommendation was required to be filed within fourteen days of receiving it. Plaintiff requested additional time to file objections, and this court granted her request. On January 13, 2017, Plaintiff filed her objections to the Report and Recommendation and a Motion for Entry of Default as to Mark R. McDougal.

The court has reviewed the case *de novo* and the court agrees with the Report and Recommendation in its entirety. Plaintiff's objections do not specifically address the legal analysis in Magistrate Judge Pead's Report and Recommendation. Plaintiff cannot merely state that Defendants acted under color of state law. She must state facts in support of such a claim. However, the facts alleged do not plausibly support a finding that Defendants were acting under color of law or engaged in a conspiracy with the State or its agents. As explained by Magistrate Judge Pead, Plaintiff's Complaint fails to state a federal civil rights claim.

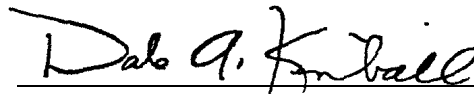
The court also denies Plaintiff's Motion for Entry of Default as to Mark R. McDougal (ECF Dkt. No. 43), which was filed after the Report and Recommendation was issued. Defendant Mark R. McDougal filed a motion to dismiss one business day after the date Plaintiff calculated his response to her Amended Complaint was due.¹ Plaintiff had an opportunity to respond to Defendant's motion to dismiss and was not prejudiced by the additional day. Moreover, she filed her motion for entry of default well after Defendant's motion to dismiss was filed and she was aware that Defendant had already taken an active role in the litigation. In her objections, Plaintiff takes issue with Mark R. McDougal filing the motion to dismiss only on behalf of Mark R. McDougal & Associates. However, given that Magistrate Pead recommended dismissal of Plaintiff's complaint under the screening provisions of 28 U.S.C. § 1915, the motions to dismiss were unnecessary. Magistrate Pead's legal analysis is based on the allegations of the Amended Complaint, and under those allegations, Plaintiff has failed to state a claim for relief against any of the Defendants. Therefore, whether or not a Defendant filed a motion to dismiss, the Amended Complaint is dismissed.

¹ November 11, 2016, was Veterans' Day, a federal holiday, and the court was closed.

The court hereby adopts and affirms the Report and Recommendation as the Order of the court. Accordingly, Plaintiff's Complaint is DISMISSED pursuant to the screening provisions of 28 U.S.C. § 1915 and Federal Rule of Civil Procedure 12(b)(6), Defendants' pending motions to dismiss the Amended Complaint (ECF Dkt Nos. 31, 32, 34, 35, 36) are GRANTED, and Plaintiff's renewed motion for appointment of counsel (ECF Dkt. No. 38), motion to dismiss Defendants' answers (ECF Dkt. No. 37), and Motion for Entry of Default (ECF Dkt. No. 43) are DENIED.

DATED this 20th day of January, 2017.

BY THE COURT:

A handwritten signature in black ink, reading "Dale A. Kimball", is written over a horizontal line.

DALE A. KIMBALL
United States District Judge